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Document No. 4179
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 48-60-05 et seq.

61-118. Electronic Equipment Collection and Recovery

Preamble:

The South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, Section 48-60-5 et seq., S.C. Code of Laws, 1976, as amended, establishes requirements for the sale, disposal and recovery of covered electronic devices, specifically for household computers, printers and televisions. The Act requires the Department of Health and Environmental Control to promulgate regulations to implement the provisions of the Act.

To satisfy the requirements of the Act, the Department is proposing new Regulation 61-118, Electronic Equipment Collection and Recovery. The proposed regulation establishes standards for labeling covered devices and for the registration of manufacturers and recoverers of covered devices. The proposed regulation establishes procedures for banning covered devices from solid waste landfills and specifies fees relative to sales of computers and market share of sales for televisions. The proposed regulation addresses responsibilities of manufacturers and retailers of covered electronic devices as defined by the Act, standards for the safe, environmentally responsible recovery, recycling or disposal of discarded devices and reporting requirements. The regulation will also establish fines for violations of the Act and the regulation.

The proposed regulation would not take effect prior to July 1, 2011.

A Notice of Drafting to promulgate this regulation was published in the *State Register* on October 22, 2010. This regulation will require legislative review.

Discussion of Proposed New Regulation:

61-118. ELECTRONIC EQUIPMENT COLLECTION AND RECOVERY

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Section A describes the purpose and scope of the regulation, lists the types of electronic devices that are subject to regulation and identifies the parties that are required to take action.

Section B defines the terms used throughout the regulation and presents the terms in alphabetical/numerical order.

Section C states the effective date for which consumers must cease placement of covered electronic devices into waste streams destined for landfills.

Section D establishes responsibilities of computer manufacturers.

Section D.1 establishes a ninety-day period from the effective date of the regulation for computer manufacturers to comply with labeling, collection and recovery program requirements, and registration. The standards for labeling and for collection and recovery programs are defined. The information required to register as a computer manufacturer is listed and the standards for a computer devices recovery plan is explained.

Section D.2 explains the annual requirement for fee payment and information updates that are required for registered computer manufacturers.

Section D.3 describes the fee payment required for initial registration as a computer manufacturer and how fee payment is calculated for annual renewal.

Section D.4 sets a maximum penalty of \$1,000 for each violation of a Section D requirement.

Section E establishes responsibilities of Television Manufacturers.

Section E.1 requires each television manufacturer to provide the Department with a designated contact person for obtaining and supplying compliance information to the Department within thirty days of the effective date of the regulation.

Section E.2 establishes a ninety-day period for television manufacturers to meet the labeling, collection and recovery program standards and registration requirements with initial fee payment. The labeling, collection program standards, and registration requirements for television manufacturers are explained. The requirements for a television devices recovery plan are listed.

Section E.3 specifies a ninety-day period for television manufactures to pay annual fees and to provide an annual report to the Department. The data and information updates required for the annual report are listed.

Section E.4 establishes the annual recycling obligation by weight of a television manufacturer as calculated according to market share. The section describes how the obligation is calculated and requires the Department to notify each television manufacturer of their market share recycling obligation.

Section E.5 establishes a fee schedule required for television manufacturers. Fees for initial registration, annual renewal, and shortfall fees for failing to meet recycling obligations are listed. The section establishes a fee exemption for manufacturers who sell 1,000 or less units per year.

Section E.6 establishes a maximum fine of \$1,000 for each violation of a Section E requirement.

Section F. establishes a ninety-day period from the effective date of the regulation for retailers to ensure that the covered devices they sell have labels as required by the regulation. The section also requires retailers to verify or provide recovery programs for the manufacturers of the covered devices they sell.

This section does not apply to televisions that sell for less than one hundred dollars. A maximum fine of \$200 is established for each violation of a Section F requirement.

Section G establishes the requirements for recoverers of covered devices in South Carolina.

Section G.1 specifies that covered devices must be recovered in a manner that complies with all applicable federal, state, and local requirements

Section G.2 specifies the financial assurance amounts required for recoverers.

Section G.3 exempts local government collection operations from financial assurance requirements.

Section G.4 lists the information to be submitted to the Department for a recoverer to register, including documentation that the recoverer is compliant with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable standard.

Section G.5 allows that a conditional registration may be requested by recoverers that are undergoing a process to verify that they meet the standards of section G.4 and that the Department may revoke the conditional registration of a recoverer that fails to gain compliance with the requirements of Section G.4.

Section G.6 explains that the Department will not register a recoverer that fails to provide complete registration information.

Section G.7 establishes the allowable mechanisms that may be used by recoverers to demonstrate that they have met financial assurance requirements.

Section G.8 establishes a ninety-day period after the end of a fiscal year for a recoverer to submit annual reports to the Department. The report shall include the number or weight of devices by category, the sources of the devices, a description of how the devices are disassembled or processed, and the final disposition or destination of the devices or subassemblies.

Section G.9 establishes that the Department shall provide on its website and in an annual report, the list of South Carolina recoverers that have satisfied the requirements of Section G.

Section G.10 exempts entities that only repair or resell covered devices from the requirements of Section G provided they comply with all other federal, state and local requirements.

Section G.11 exempts entities that consolidate covered devices prior to transfer to a recoverer from the requirements of Section G, provided they do not disassemble covered devices for disposal or recycling and provided they comply with all other applicable federal, state, and local requirements.

Section H establishes requirements for the owners and operator of landfills.

Section H.1 requires that the owners or operators of a Class Three landfill reject from the gate of the landfill, loads of waste which they know to contain more than an incidental amount of covered devices.

Sections H.2 and H.3 establish that the owners or operators of a Class Three landfill shall post signs and notify solid waste haulers of the requirements of the regulation within 30 days of the effective date of this regulation. The section also establishes that for the purpose of this regulation, haulers do not include consumers who haul their own waste to the landfill.

Section H.4 establishes a maximum fine of one thousand dollars (\$1000.00) per violation for improper disposal in Class Three landfills and a maximum fine of two hundred dollars (\$200.00) for a landfill that fails to comply with signage or hauler notification requirements in Section H.

Section H.5 establishes that the owner or operator of a Class One or Class Two landfill may not accept for disposal, loads containing covered devices or subassemblies of those devices.

Section H.6 establishes a maximum fine of one thousand dollars (\$1,000.00) per violation for the owner or operator of a Class One or a Class Two landfill who violates the requirements of Section H.5.

Section I identifies information submitted to the Department that may be designated, by the manufacturer of a covered device, as proprietary.

Section J identifies S.C. Code Section 44-1-60 as the procedural model for a person to appeal a Department decision.

Section K protects the remaining portion of the regulation should any part or language be declared invalid.

Notice of Staff Informational Forum and Public Comment:

Staff of the Department of Health and Environmental Control (DHEC) invites interested members of the public and regulated community to attend a staff-conducted informational forum to be held on February 28, 2011, at 10:00 a.m. in Room 2102 at the Bureau of Land and Waste Management Building, at 8911 Farrow Road, Columbia, S.C. The purpose of the forum is to answer questions, clarify issues and receive comments by interested persons on the proposed regulation.

Interested persons are also provided an opportunity to submit written comments to the staff forum by writing to Jana White, Bureau of Land and Waste Management, S.C. DHEC, 2600 Bull St., Columbia, S.C. 29201 or by email to whitejm@dhec.sc.gov. Written comments must be received no later than 4:00 p.m. on February 28, 2011.

Comments received at the forum and by mail by the deadline noticed above shall be considered by the staff in formulating the final draft proposed regulation for submission to the Board for public hearing on April 14, 2011, as noticed below. Comments received from the forum and comment period shall be submitted to the Board in a Summary of Public Comments and Department Response for consideration at the public hearing.

Copies of the proposed regulation for public notice and comment are available by contacting Jana White at the above address, or from the Department's Regulation Development Update website: <http://www.scdhec.gov/regulatory.htm>; At this Internet site, click on Regulation Development Update, the Land and Waste Management category, then scroll down to this proposed regulation.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on April 14, 2011. The public hearing will be held in the Board Room of the Commissioner's Suites, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The agenda

is published by the Department 24 hours in advance of the meeting at <http://www.scdhec.gov/administration/board.htm>. Persons who wish to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Preliminary Fiscal Impact Statement:

There will be no cost to the State General Fund. Staff anticipates that there will be a minimal cost to the Department for the one full-time equivalent staff position necessary to implement the provisions of the Act; however, these costs will be funded from the registration and annual renewal fees paid by the manufacturers of covered television and computer devices, in accordance with the regulation and as allowed by the Act. Additional costs to State government are not anticipated. Costs to local governments for the diversion of covered devices from the waste stream as required by the Act would be offset in part by grant funding made available by the Department from the registration and renewal fees implemented, as allowed by the regulation.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115:

DESCRIPTION OF THE REGULATION: New regulation, Electronic Equipment Collection and Recovery.

Purpose: The purpose of this regulation is to address and implement the applicable provisions of Act 178, known as the South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, codified at Section 48-60-05 et seq., S.C. Code of Laws, 1976, as amended.

The regulation will include, but not be limited to: responsibilities of manufacturers and retailers of covered electronic devices as defined by the Act; standards for the collection and use of fees as provided for in the Act; standards for the safe, environmentally responsible recovery, recycling or disposal of discarded devices; reporting requirements; and liability issues for information stored on discarded devices. The regulation will also establish fines for violations of the Act and the regulation. The proposed regulation will not take effect prior to July 1, 2011.

Legal Authority: Section 48-60-5 et seq., S.C. Code of Laws, 1976, as amended.

Plan for Implementation: Copies of the regulation will be available electronically on the South Carolina Legislature Online website, and the Department regulation development website (<http://www.scdhec.gov/regulatory.htm>). Printed copies will be available for a fee from the Department Freedom of Information Office. Staff will educate the regulated community on the provisions of the Act and the requirements of the regulation. The landfill ban on covered electronic devices will be implemented in the same fashion as other banned items. Staffing will consist of existing personnel and one new staff position as provided for in the regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The need for this regulation is stated in the Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act of 2010. The General Assembly found that:

(1) Televisions, computing and printing devices are critical to the development of this state's economy and the promotion of the quality of life of the citizens of this State.

(2) Many of these televisions, computing and printing devices can be refurbished and reused or recycled.

(3) Developing and implementing a system for recovering televisions, computing and printing devices promotes resource conservation, public health, public safety and economic prosperity.

(4) In order to carry out these purposes, the State must establish a comprehensive and convenient recovery program for televisions, computing and printing devices based on individual manufacturer responsibility and shared responsibility among consumers, retailers and government, and that the program must ensure that end-of-life televisions, computing and printing devices are disposed of in a manner that promote resource conservation through the development of an effective and efficient system for collection and recycling, and to encourage manufacturers to offer convenient collection and recycling service to consumers at no charge.

This regulation is a reasonable way to comply with the Act because it can be implemented using staff allowed by the Act without impact to the general fund; provides clear procedures, standards and criteria for manufacturers, sellers and recyclers of covered electronic devices; promotes the development of a comprehensive system for end-of-life devices that promotes resource conservation, public health, public safety and economic prosperity; and establishes a recovery program based on shared responsibility among manufacturers, consumers, retailers and government.

DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: Implementation of this regulation will not require additional resources beyond those allowed for in the Act. The Act states that the Department may propose by regulation, an initial registration fee or annual fee, or both, the proceeds of which is to be used solely for the purposes of implementing the provisions of the Act. See Preliminary Fiscal Impact Statement above.

External Costs: There will be a cost to the manufacturers of covered devices as allowable by the Act. Fees established by the regulation include initial registration fees, annual fees and shortfall fees. Fees are set out in the proposed regulation at Sections D.3 and E.5.

External benefits: There will be a benefit to the producers, users and recyclers of electronic devices as the responsibility associated with the proper management of the end-of-life devices will be shared among all parties. It will benefit the residents of South Carolina as the proper management of electronics will result in reducing the potential threats to the quality of ground water and to worker safety. It will benefit the economy by promoting the electronics recycling industry and promoting resource conservation.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no adverse effect on the environment. The proposed regulation will promote the public health by ensuring electronic devices are recycled in a safe, environmentally sound manner, and not placed in landfills.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The Act established a ban on the placement of covered electronics in a landfill, but without clear standards for the proper management of covered devices as established in the proposed regulation, there would be limited options for properly managing used electronics. This could result in the improper and illegal disposal of the items in a manner that would be unsafe to workers and could result in harmful releases to the environment.

Statement of Rationale:

The South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, Section 48-60-150 et seq., S.C. Code of Laws, 1976, as amended, directs Department staff to promulgate regulations needed to implement the chapter's provisions, including reporting requirements and standards for operations of recovery facilities, and provides that staff may propose by regulation, fees on the manufacturers of covered computer and television devices.

A workgroup comprised of representatives of local government, electronics manufacturers, electronics recyclers, retailers, environmental groups, the Association of Counties, the South Carolina Municipal Association, the waste industry and Department staff developed the criteria on which the proposed regulation is based.

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Text:

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- A. Purpose and Scope; Applicability.

1. Purpose and Scope. The South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, Section 48-60-5 et seq., S.C. Code of Laws, 1976, as amended, established requirements for the sale, management and recovery of covered electronic devices, specifically for household computers, printers and televisions. The purpose of this regulation is to implement the provisions of the Act.

2. Applicability. This regulation applies to the proper management of consumer computers, printers and televisions, by the manufacturers, retailers, collectors, recoverers and consumers of these devices.

B. Definitions.

1. “Act” means the South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act of 2010.

2. “Collect” or “collection” means to facilitate the delivery of a covered device to a collection site included in the manufacturer’s program, and to transport the covered device for recovery.

3. “Collection event” means a consolidation program offered for a limited duration and designated as part of a manufacturer’s recovery program. A collection event may be operated by a private, public or non-profit entity.

4. “Collection point” means a consolidation location operated on an on-going basis and designated as part of a manufacturer’s recovery program. A collection point may be operated by a private, public or non-profit entity and may include drop-off locations or areas served by curbside collection programs.

5. “Collector” means a person or entity that collects or consolidates covered devices.

6. “A computer manufacturer” means a person who:

a. manufactures a covered computer device under its own brand for sale or without affixing a brand;

b. sells in this State a covered computer device produced by another supplier under its own brand or label;

c. imports covered computer devices; if a company from which an importer purchases a covered device has a presence or assets in the United States, that company must be considered the manufacturer; or,

d. manufactures a covered computer device, supplies a covered device to a person within a distribution network that includes wholesalers or retailers in this State, and benefits from the sale of a covered device through that distribution network.

7. “Conditional registration” means the temporary registrations issued by the Department to recoverers of covered devices that have not yet demonstrated to the satisfaction of the Department that they comply with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable industry or governmental standards.

8. “Consolidate” means to transport or store for less than one year, a covered device, prior to delivery to a recovery or recycling facility. Consolidation programs may include, but are not limited to, local government programs.

9. “Consumer” means an occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit who has used a covered device primarily for personal or home business use.

10. “Covered computer device” means a desktop or notebook computer, computer monitor, or printing device marketed and intended for use by a consumer, but does not include a covered television device.

11. “Covered devices” means a covered computer device and a covered television device marketed and intended for use by a consumer. “Covered device”, “covered computer device”, and “covered television device” do not include any of the following:

a. a covered device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

b. a covered device that is functionally or physically a part of, or connected to, or integrated within equipment or a system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, control or medical products as defined under the federal Food, Drug, and Cosmetic Act, or equipment used for security, sensing, monitoring, antiterrorism, emergency services purposes or equipment designed and intended primarily for use by professional users;

c. a covered device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air purifier, water heater, or exercise equipment; or

d. telephones of any type, including mobile telephones, a personal digital assistant (PDA), a global positioning system (GPS), or a hand-held gaming device.

12. “Covered television device” means any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal display, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include a covered computer device.

13. “Department” means the South Carolina Department of Health and Environmental Control.

14. “Department-designated third-party registrar” means an independent, not-for-profit organization such as the Electronics Recycling Coordination Clearinghouse, that may be designated by the Department to collect registration information and recovery plans from computer and television manufacturers. The designation of a third-party registrar may be made on an annual basis and shall be posted on the Department website.

15. “EQC Region” means one of the eight Environmental Quality Control regions comprised of three or more counties designated by the Department’s Bureau of Environmental Services and mapped on the Department website.

16. “Fiscal year” means a period of twelve (12) consecutive months beginning July 1 and ending June 30. The term may be referred to as FY and carries the date of the calendar year in which it ends. As an example, the fiscal year ending June 30, 2012 may be referred to as FY2012.

17. “Manufacturer’s brands” means a manufacturer’s name, brand name either owned or licensed by the manufacturer, or brand logo for which the manufacturer has legal responsibility.

18. “Notebook computer” means a portable computer device, to include laptop computers, notepad computers, netbook computers and tablet computers.

19. “Person” means an individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, government entity, public benefit corporation, or public authority.

20. “Printing device” means a desktop printer that prints on paper and is designed for use with a desktop or portable computer. The term includes, but is not limited to, a daisy wheel, dot matrix, inkjet or laser printer. The term includes devices that perform other functions in addition to printing such as copying, scanning or transmitting a facsimile, but does not include free-standing devices that are primarily copiers or facsimile machines used independently of desktop or portable computers. It does not include floor-standing printers, small household printers such as a calculator with printing capabilities or label makers, or printing devices that are embedded into products that are not covered computer devices.

21. “Recover” means to reuse or recycle.

22. “Recoverer” means a person or entity that reuses or recycles a covered device.

23. “Regional” means, for the purpose of this regulation, an area encompassing more than one county. A regional collection event would be made available to consumers without limiting access to one county of residence.

24. “Repairers” means a person or entity that repairs or refurbishes covered devices for resale or reuse but does not disassemble covered devices for the purpose of recycling the component parts or subassemblies. Repairers may also be collectors.

25. “Retail sale” means the sale of a new product through a sales outlet, the Internet, mail order, or otherwise, whether or not the seller has a physical presence in this State. A retail sale includes the sale of new products.

26. “Retailer” means a person engaged in retail sales.

27. “Reuse organizations” means a public or private, for-profit or not-for-profit organization that accepts covered devices for resale or reuse but does not disassemble covered devices for the purpose of recycling the component parts or subassemblies. Reuse organizations may also be collectors.

28. “Sale” or “sell” means any transfer for consideration of title including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not mean leases.

29. “Shortfall fee” means a fee due to the Department from the manufacturer of a covered television device that fails to achieve its individual recycling obligation for the previous program year.

30. “Subassemblies” means pieces of a covered device that have been disconnected by breakage or removed during disassembly of the device. It does not refer to a keyboard, mouse, speaker or other peripheral device.

31. “Television” means any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal display, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include a covered computer device.

32. “Television manufacturer” means a person who:

a. manufactures covered television devices under a brand that it licenses or owns, for sale in this State;

b. manufactures covered television devices without affixing a brand for sale in this State;

c. resells into this State a covered television device under a brand it owns or licenses produced by other suppliers, including retail establishments that sell covered television devices under a brand the retailer owns or licenses;

d. imports covered television devices; if a company from which an importer purchases a covered device has a presence or assets in the United States, that company must be considered the manufacturer;

e. manufactures covered television devices, supplies them to any person or persons within a distribution network that includes wholesalers or retailers in this State, and benefits from the sale in this State of those covered television devices through the distribution network; or

f. assumes the responsibilities and obligations of a television manufacturer under this chapter. In the event the television manufacturer is one who manufactures, sells, or resells under a brand it licenses, the licensor or brand owner of the brand shall not be included in the definition of television manufacturer under items (a) or (c) above.

C. Consumer Responsibilities.

After July 1, 2011, a consumer must not knowingly place or discard a covered device or any of the components or subassemblies of a covered device in any waste stream that is to be disposed of in a solid waste landfill.

D. Responsibilities of Manufacturers of Covered Computer Devices.

1. Initial Requirements. Ninety (90) days after the effective date of this regulation, the manufacturer of a covered computer device may not sell or offer to sell in this State, a covered computer device unless it has met the requirements for labeling, collection and recovery program design and registration outlined below, including payment of fees in accordance with Section D.3 of this regulation:

a. Labeling requirements. A label indicating the manufacturer of a covered computer device’s brand must be permanently affixed to the covered device in a readily visible location.

b. Collection and recovery program requirements. The manufacturer of a covered computer device shall provide a collection and recovery program to consumers. The program shall be at no charge or with an equivalent financial incentive to the consumer.

(1) A manufacturer collection and recovery program must offer to collect from a consumer a covered computer device bearing a label as provided in Section D.1.a of this regulation.

(2) A collection and recovery program must include:

(a) a mail-back program, in which a consumer can return that manufacturer's covered device by mail, including a system in which a consumer can access the Internet, print a prepaid shipping label, package the product, and affix the prepaid label to the package for deposit with the United States Postal Service or other carrier selected by the manufacturer of a covered computer device; or

(b) in coordination with the Department, the designation of a minimum of four collection points located in four different EQC regions and made available on an on-going basis for the collection and recovery of that manufacturer's covered computer devices; or

(c) in coordination with the Department, an annual offering of a minimum of eight collection events located in eight different EQC regions. Collection programs making use of collection events must include collection of any covered computer device.

(3) A manufacturer may work cooperatively with retailers, recoverers, local governments or reuse organizations to implement a collection and recovery program and may make use of existing infrastructure.

(4) Manufacturers of covered computer devices may work collectively and cooperatively to offer collection services to consumers.

(5) A computer manufacturer that maintains an Internet website shall provide and maintain a description of the collection programs and collection events offered in South Carolina by the manufacturer.

(6) Materials collected as part of a manufacturer collection and recovery program must be reused or recycled by a recoverer that is compliant with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable industry or governmental standards.

c. Initial registration requirements.

(1) The manufacturer shall submit to the Department the initial registration fee as required by Section D.3.

(2) The manufacturer shall submit to the Department or to the Department-designated third-party registrar, a completed Computer Devices Manufacturer Registration Form, using the form provided by the Department.

(3) The manufacturer shall submit to the Department or to the Department-designated third-party registrar, a completed Computer Devices Collection and Recovery Plan. The Department shall review plans submitted by manufacturers to determine if they are compliant with the requirements of this regulation. A Computer Devices Collection and Recovery Plan shall include:

(a) a complete description of the methods to be used to collect and transport the covered computer devices;

(b) for manufacturers that do not provide a mail back system, a list of collection sites or events to be provided on an annual basis, as coordinated with the Department;

(c) a description of the processes and methods to be used to collect and recover the covered computer devices including the name and location of all recoverers to be utilized;

(d) a description of the means to be used to publicize the collection services, including specification of a website or other mechanisms used to provide information about the registrant's recycling program in sufficient detail to allow consumers to learn how to return their covered computer devices for recovery; and

(e) the intention of the registrant to implement the collection program through its own operations, either individually or with other registered manufacturers, or by contract with others, to include retailers, recoverers, not-for-profit corporations, or local governments.

2. Annual Requirements for Computer Manufacturers. In the fiscal year following its initial registration, and every year thereafter, the manufacturer of a covered computer device shall, within ninety (90) days of the end of the fiscal year, submit:

a. to the Department, the appropriate annual fee as outlined in Section D.3 of this regulation;

b. to the Department or to the Department-designated third-party registrar, any corrections, as necessary, to its registration information;

c. to the Department or to the Department-designated third-party registrar, any updates or revisions, as necessary, to its Computer Devices Recovery Plan; and

d. a summary of its previous year's collection efforts including the amounts of materials collected, by type of covered device, collection method and county of generation. Manufacturers are encouraged to include recovery data for other electronic devices in their annual summary if such information is available.

3. Registration Fees for the Manufacturer of a Covered Computer Device.

a. Initial registration fee schedule:

(1) The manufacturer of a covered computer device with annual sales in South Carolina greater than twenty-five thousand (25,000) covered devices will pay an initial registration fee of fifteen thousand dollars (\$15,000.00).

(2) The manufacturer of a covered computer device with annual sales in South Carolina greater than five thousand (5,000) covered devices and less than or equal to twenty-five thousand (25,000) covered devices will pay an initial registration fee of ten thousand dollars (\$10,000.00).

(3) The manufacturer of a covered computer device with annual sales in South Carolina greater than one thousand (1,000) covered devices and less than or equal to five thousand (5,000) covered devices will pay an initial registration fee of one dollar (\$1.00) per unit, up to a maximum of two thousand dollars (\$2,000.00).

(4) A manufacturer of a covered computer device that sells one thousand (1,000) or less covered devices per year in South Carolina is exempt from any fee.

b. Annual renewal fee schedule:

(1) The manufacturer of a covered computer device with annual sales in South Carolina of greater than twenty-five thousand (25,000) covered devices will pay an annual renewal registration fee of ten thousand dollars (\$10,000.00).

(2) The manufacturer of a covered computer device with annual sales in South Carolina greater than five thousand (5,000) covered devices and less than or equal to twenty-five thousand (25,000) covered devices will pay an annual renewal fee of five thousand dollars (\$5,000.00).

(3) The manufacturer of a covered computer device with annual sales in South Carolina greater than one thousand (1,000) covered devices and less than or equal to five thousand (5,000) covered devices will pay an annual renewal fee of seventy-five cents (\$0.75) per covered computer device sold, up to a maximum of one thousand dollars (\$1,000.00).

(4) A manufacturer of a covered computer device that sells one thousand (1,000) or less covered devices per year in South Carolina is exempt from any fee.

4. The manufacturer of a covered computer device who fails to comply with any requirement of Section D of this regulation is subject to a fine not to exceed one thousand dollars (\$1,000.00) per violation.

E. Responsibilities for the Manufacturers of Covered Television Devices.

1. Within thirty (30) days of the effective date of this regulation, the manufacturer of a covered television device shall provide the Department with contact information for the manufacturer's designated agent or employee whom the Department may contact for information related to the manufacturer's compliance with the requirements of Section E of this regulation.

2. Ninety (90) days after the effective date of this regulation, the manufacturer of a covered television device may not sell or offer to sell in this State, a covered television device unless it has met the requirements for labeling, collection and recovery program design, and registration described below, and has paid fees as required in Section E.5 of this regulation.

a. Labeling requirements. A label indicating the television manufacturer's brand must be permanently affixed to the covered device in a readily visible location.

b. Collection and recovery programs. The manufacturer of a covered television device shall provide a collection and recovery program to consumers at no charge or with an equivalent financial incentive.

(1) A manufacturer collection and recovery program must offer to collect from a consumer, a covered television device bearing a label as provided in Section E.2.a of this regulation.

(2) A collection and recovery program must include:

(a) a mail-back program, in which a consumer can return a covered television device by mail, including a system in which a consumer can access the Internet, print a prepaid shipping label, package the product, and affix the prepaid label to the package for deposit with the United States Postal Service or other carrier selected by the television manufacturer; or

(b) in coordination with the Department, the designation of a minimum of four regional collection points, located in four different EQC regions, for the collection and recovery of covered television devices on an ongoing basis; or

(c) in coordination with the Department, an annual offering of a minimum of eight collection events, located in eight different EQC regions, for the collection and recovery of covered television devices.

(3) A manufacturer may work cooperatively with retailers, recoverers, local governments or reuse organizations to implement a collection and recovery program and may make use of existing infrastructure.

(4) Television manufacturers may work collectively and cooperatively to offer collection services to consumers.

(5) A television manufacturer that maintains an Internet website shall provide and maintain a description of the collection programs and events offered in South Carolina by the manufacturer.

(6) Materials collected as part of a manufacturer collection and recovery program must be reused or recycled by a recoverer that is compliant with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable industry or governmental standards.

c. Initial registration requirements.

(1) The manufacturer shall submit to the Department the initial registration fee as defined by Section E.5 of this regulation.

(2) The manufacturer shall submit to the Department or to the Department-designated third-party registrar, a completed Television Devices Manufacturer Registration Form, using the form issued by the Department.

(3) The manufacturer shall submit to the Department or to the Department-designated third-party registrar, a complete Television Devices Collection and Recovery Plan. The Department shall review plans submitted by manufacturers to determine if they are compliant with the requirements of this regulation. A Television Devices Collection and Recovery Plan shall include:

(a) a complete description of the methods to be used to collect and transport the covered television devices;

(b) for manufacturers that do not provide a mail back system, a list of collection sites or events to be provided on an annual basis, as coordinated with the Department;

(c) a detailed description of the processes and methods to be used to collect and recover covered television devices including the name and location of all recoverers used;

(d) a description of the means to be used to publicize the collection services, including specification of a website or other mechanism to provide information about the registrant's recycling program in sufficient detail to allow consumers to learn how to return their covered television devices for recovery; and

(e) the intention of the registrant to implement the collection program through its own operations, either individually or with other registered manufacturers, or by contract with others, to include retailers, recoverers, not-for-profit corporations, or local governments.

3. Annual Requirements for Television Manufacturers.

a. For the fiscal year following its initial registration, and every year thereafter, the manufacturer of a covered television device shall, within ninety (90) days of the end of the fiscal year, submit to the Department, the appropriate fees as outlined in Section E.5 of this regulation.

b. For the fiscal year following its initial registration, and every year thereafter, the manufacturer of a covered television device shall, within ninety (90) days of the end of the fiscal year, submit to the Department or to the Department-designated third-party registrar, an annual report, including at a minimum:

(1) the total weight of manufacturer's televisions sold at retail in the United States;

(2) a summary of the collection programs hosted by the manufacturer in South Carolina during the previous year, including the locations of the collections, the total weight of covered television devices recovered as part of the programs, the names of the collectors and recoverers used, and an explanation of any cooperative collection partnership arrangements with other entities, including retailers, recyclers, local governments and reuse organizations;

(3) the total weight of covered television devices collected and recycled nationally during the previous program year;

(4) any corrections, as necessary, to its registration information; and

(5) any updates or revisions, as necessary, to its Television Devices Recovery Plan, especially as related to how the manufacturer plans to meet its recycling obligation as calculated by the Department.

c. The program year for a collection and recovery program and for these reporting requirements is the state's fiscal year.

4. Beginning fiscal year 2013, and annually thereafter, the manufacturer of a covered television device must recycle or arrange for the recycling of its individual recycling obligation of covered television devices as calculated by the Department. Not later than December 31 of each year, the Department shall inform television manufacturers of their market share recycling obligations of covered television devices as calculated using collection data from the previous fiscal year.

a. The manufacturer of a covered television device may fulfill the requirements of this section either individually or in participation with other television manufacturers. A recovery program may use existing collection and consolidation infrastructure for collecting covered television devices, including retailers, recoverers and reuse organizations.

b. The individual recycling obligation for each television manufacturer is the total pounds of televisions recovered in South Carolina by all television manufacturers during the previous program year multiplied by the manufacturer's market share as calculated in Section 4.c of this regulation.

c. Market share is the total weight of the manufacturer's televisions that were sold at retail in the United States to individuals during the previous program year, multiplied by the population fraction of

South Carolina to the United States population, divided by the total weight of all of the televisions that were sold at retail to individuals in South Carolina during the previous program year. The population fraction is determined using the most recent United States Census data.

5. Television Manufacturer Fee Schedule.

a. Initial registration fee schedule:

(1) The manufacturer of a covered television device with a market share greater than five percent (5%) will pay an initial registration fee of five thousand dollars (\$5,000.00).

(2) The manufacturer of a covered television device with a market share greater than one percent (1%) and less than or equal to five percent (5%), will pay an initial registration fee of twenty-five hundred dollars (\$2,500.00).

(3) The manufacturer of a covered television device that sells more than one thousand (1,000) covered devices in South Carolina annually, and has a covered television device market share of less than or equal to one percent (1%), will pay an initial registration fee of one thousand dollars (\$1,000.00).

(4) A manufacturer of a covered television device that sells one thousand (1,000) or less covered devices per year in South Carolina is exempt from any fee.

b. Annual renewal fee schedule:

(1) The manufacturer of a covered television device with a market share greater than five percent (5%) will pay an annual renewal fee of thirty-five hundred dollars (\$3,500.00)

(2) The manufacturer of a covered television device with a market share greater than one percent (1%) and less than or equal to five percent (5%), will pay an annual renewal fee of twenty-five hundred dollars (\$2,500.00).

(3) The manufacturer of a covered television device that sells more than one thousand (1,000) devices in South Carolina annually, and has a market share of less than or equal to one percent (1%), will pay an annual renewal fee of seven hundred fifty dollars (\$750.00).

(4) A manufacturer of a covered television device that sells one thousand (1,000) or less devices per year in South Carolina is exempt from an annual renewal fee.

c. Television manufacturers shortfall fees.

(1) In addition to initial and annual registration fees, the manufacturer of a covered television device that fails to meet its individual recycling obligation for the previous program year as outlined in Section E.4 of this regulation will be assessed a shortfall fee. The shortfall fee will be determined as follows:

(a) If the manufacturer of a covered television device recycles at least ninety percent (90%), but less than one hundred percent (100%) of its individual recycling obligation, the shortfall fee will be thirty cents (\$0.30) multiplied by the number of additional pounds that should have been recycled in order for the manufacturer to have met its individual recycling obligation.

(b) If the manufacturer of a covered television device recycles at least fifty percent (50%), but less than ninety percent (90%) of its individual recycling obligation, the shortfall fee will be forty cents (\$0.40) multiplied by the number of additional pounds that should have been recycled in order for the manufacturer to have met its individual recycling obligation.

(c) If the manufacturer of a covered television device recycles less than fifty percent (50%) of its individual recycling obligation, the shortfall fee will be fifty cents (\$0.50) multiplied by the number of additional pounds that should have been recycled in order for the manufacturer to have met its individual recycling obligation.

(2) Shortfall fees shall be submitted to the Department along with the annual manufacturer report and renewal fee.

(3) A manufacturer shall calculate its shortfall fees based upon the recycling data reported in its annual report, using the market share obligation as calculated by the Department and reported to the manufacturer.

(4) A manufacturer of a covered device that sells one thousand (1,000) or less devices per year is exempt from any shortfall fee.

6. The manufacturer of a covered device who fails to comply with the requirements of Section E is subject to a fine not to exceed one thousand dollars (\$1,000.00) per violation.

F. Retailer Requirements.

1. Six (6) months after the effective date of this regulation, a retailer may not sell or offer to sell a covered device unless a label indicating the manufacturer's brand is permanently affixed to the covered device in a readily visible location.

2. Six (6) months after the effective date of this regulation, a retailer may not sell or offer to sell a covered device unless the manufacturer of covered device offers a collection and recovery program. The Department shall provide in an annual report and on its Internet website a list of which manufacturers of covered devices are compliant with the collection and recovery program requirements. The retailer shall be considered to have satisfied this responsibility if, on the date that the product was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the Department's Internet web site.

3. The requirements of this section do not apply to a television sold by a retailer for less than one hundred dollars (\$100.00).

4. A retailer violating any provision of this section shall be subject to a fine not to exceed two hundred dollars (\$200.00) per violation.

G. South Carolina Recoverer Requirements.

1. Covered devices must be recovered in a manner that complies with all applicable federal, state, and local requirements.

2. Within sixty (60) days of the effective date of this regulation, no recoverer may accept covered devices unless they have:

a. registered with the Department in accordance with Section G.4 of this regulation; and

b. funded a financial assurance mechanism as described in Section G.7 of this regulation in the amount of one hundred fifty thousand dollars (\$150,000.00) for a regular registration, and two hundred fifty thousand dollars (\$250,000.00) for a conditional registration pursuant to Section G.4.

3. The financial responsibility requirements of G.2.b shall not apply to any local government or region comprised of local governments which owns and operates a recovery facility unless and until such time as federal regulations require such local governments and regions to demonstrate financial responsibility for such facilities.

4. To register, a recoverer must submit to the Department:

a. a registration request;

b. the name, address and contact information for the facility;

c. documentation that the recoverer has secured a financial assurance mechanism in accordance with Section G.2 above; and

d. documentation that the recoverer is compliant with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable industry or governmental standards.

5. Recoverers that have not yet obtained compliance with the requirements of Section G.4.d of this regulation may request a conditional registration.

a. Recoverers requesting a conditional registration must demonstrate that they are undergoing a process to gain compliance with the requirements of Section G.4.d of this regulation, including timelines for beginning operations and for requesting and obtaining certification or other approval.

b. A recoverer operating under a conditional registration will have twelve (12) months from the date of registration to submit to the Department evidence that they are compliant with the requirements of Section G.4.d of this regulation, unless otherwise approved by the Department. One (1) extension of a conditional registration will be considered for a period of not more than six (6) additional months. Extension requests must be made in writing and include evidence to document that the recoverer has made substantial progress toward obtaining a certification or verification of compliance.

c. If a recoverer operating under a conditional registration fails to gain compliance with the requirements of Sections G.4.d, G.5.a and G.5.b of this regulation, the Department may, with proper notice, revoke the recoverer's registration.

d. Recoverers that have obtained a conditional registration may accept covered devices provided they comply with all other federal, state and local requirements, to include meeting the requirements for financial assurance.

6. The Department will not register a recoverer that submits an incomplete registration request. A recoverer that fails to provide documentation as required in Section G of this regulation shall not be registered by the Department.

7. Allowable Mechanisms to Demonstrate Financial Assurance.

a. Recoverers shall fund a financial assurance mechanism acceptable to the Department to ensure the third-party costs to complete closure by properly managing of any electronics, electronic subassemblies or residual waste material remaining onsite at the time a registration is revoked or terminated.

b. The mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet obligations under Sections G.2.b of this regulation will be available whenever they are needed.

c. Available financial assurance mechanisms include, but are not limited to insurance, trust funds, surety bonds, letters of credit, certificates of deposit, or other mechanism as approved by the Department.

8. Annual Reporting. Not later than ninety (90) days after the end of the fiscal year, a recoverer shall report to the Department using the form issued by the Department. The report shall include:

a. the number or the total pounds of covered devices recovered by category of device, i.e. computers, televisions, printers;

b. a listing of the sources of the devices, including the county in which they were collected;

c. a general description of the methods used to disassemble or process the devices and subassemblies;

d. the final disposition or destinations of the devices or subassemblies recovered;

e. a certification from the recoverer that the recoverer remains compliant with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable industry or governmental standards; and

f. any other updates to the information provided in their initial registration.

9. The Department shall provide to the public in an annual report and on its Internet website a list of South Carolina recoverers that have satisfied the requirements as specified in Section G of this regulation. The Department may, with proper notice, revoke the registration of any recoverer that fails to demonstrate continued compliance with the requirements of Section G of this regulation.

10. Entities that only repair or resell covered devices are exempted from the requirements of Section G provided that they comply with all other applicable federal, state and local requirements and provided that any covered devices and subassemblies not reused or sold are managed by a recoverer that is compliant with the standards of Section G.4.d of this regulation.

11. Reuse organizations, repairers, local governments and other entities that consolidate covered devices prior to transfer to a recoverer that is compliant with the standards of Section G.4.d of this regulation are exempted from the requirements of Section G provided they do not disassemble covered devices for the purpose of disposing or recycling the component parts or subassemblies and provided they manage covered devices in a manner that complies with all other applicable federal, state and local requirements.

H. Landfill Owner or Operator Requirements.

1. An owner or operator of a Class Three solid waste landfill must not, at the gate, knowingly accept for disposal, loads containing more than an incidental amount of covered devices or subassemblies of those devices.

2. Within thirty (30) days of the effective date of this regulation, the owner or operator of a Class Three solid waste landfill shall post, in a conspicuous location at the landfill, a sign stating that consumer televisions, computers, printing devices or any subassemblies of those devices are not accepted for disposal at the landfill.

3. Within thirty (30) days of the effective date of this regulation, the owner or operator of a Class Three solid waste landfill shall notify in writing, all haulers delivering solid waste to the landfill, that consumer televisions, computers, printing devices and any subassemblies of those devices are not accepted for disposal at the landfill. The owner or operator shall submit documentation to the Department that this requirement has been met. Haulers, for the purpose of Section H of this regulation, do not include consumers who haul their own waste to the landfill.

4. An owner or operator of a Class Three landfill who fails to comply with the requirements of Section H.1 of this regulation is subject to a fine not to exceed one thousand dollars (\$1,000.00) per violation. An owner or operator of a landfill who fails to comply with the requirements of Sections H.2 or H.3 of this regulation is subject to a fine not to exceed two hundred dollars (\$200.00) per violation.

5. An owner or operator of a Class One or Class Two solid waste landfill shall not accept for disposal, loads containing covered devices or subassemblies of those devices, in accordance with this regulation and Regulation 61-107.19. Solid Waste Management: Solid Waste Landfills and Structural Fill.

6. A Class One or Class Two landfill operator who fails to comply with the requirements of section H.5 is subject to a fine not to exceed one thousand dollars (\$1,000.00) per violation.

I. Confidentiality.

Financial and proprietary information as identified by the manufacturer of a covered device and submitted to the Department pursuant to this regulation is exempt from public disclosure.

J. Appeals.

Any person to whom a Department decision is issued may appeal it as a contested case pursuant to S.C. Code Section 44-1-60, as amended.

K. Severability.

Should any section, paragraph, sentence, word, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.